156-667

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 174.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN STEVENSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED MAY 18, 1891.

(14,651.)

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1 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States of America to the honorable the judges of the supreme court of the State of Arkansas, Greeting:

Because in the record, pleadings, and proceedings and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Arkansas before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John Stevenson, plaintiff, and St. Louis and San Francisco R'y, defendants, wherein was drawn in question the construction and validity of certain clauses, articles, sections, and amendments of the Constitution of and laws of the United States of America, and the decision was against the title, right, privilege, and franchises specially set up, based upon claims and founded under and upon such clauses, articles, sections, and amendments of the Constitution of and laws of the United States, a manifest error hath happened, to the great damage of the said St. Louis and San Francisco R'y Co., as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

2 Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of Jan'y, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

(The Seal of the Circuit Court of East. Dist. Ark.,)
(Western Division, U. S. A.)

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America, Eastern District of Arkansas.

Allowed by—
S. R. COCKRILL, *Chief Justice.*

STATE OF ARKANSAS:

In the Supreme Court.

I, William P. Campbell, clerk of the supreme court of the State of Arkansas, hereby certify that, in obedience to the mandate of the foregoing writ of error, a duly-certified transcript, under the seal of

said court, of the record and proceedings in the cause therein stated, with all things concerning the same, is hereto attached.

In testimony whereof I hereto set my hand as clerk of said supreme court and affix the seal of said court, at my office, in the city of Little Rock, this 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

3 The United States of America to John Stevenson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein The St. Louis and San Francisco Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. R. Cockrill, *S. R. Cockrill*, judge of the supreme court of the States of Arkansas, this 17th day of January, A. D. 1891.

Seal of the Supreme Court of Arkansas.

S. R. COCKRILL.

3½ I hereby acknowledge service of the within citation this 18 day of February, A. D. 1891.

L. P. SANDELS,
Att'y for Appellee in this Cause in Supreme Court of State of Ark's.

4 Pleas before the Hon. Jno. S. Little, judge of the Crawford circuit court, on the 6th day of October, 1887, to wit:

JOHN STEVENSON, Plaintiff,
against
SAINT LOUIS AND SAN FRANCISCO R'W'Y CO., Defendant.
} 61. Overcharges.

Complaint.

In the Crawford Circuit Court at the September Term, 1887.

(Style of cause as above stated.)

The plaintiff, complaining of the defendant, states that the defendant is a railway corporation duly organized under the laws of the States of Arkansas and Missouri under the name and style of the Saint Louis and San Francisco Railway Company.

The said defendant owns and operates a continuous line of railway from Saint Louis, in the State of Mo., through the State of Arkansas and the Indian Territory to Paris, in the State of Texas.

That on the 5th day of July, 1887, plaintiff applied to the ticket agent of the defendant's railway company stationed at Fort Smith

station, situated on the said line of defendant's railway for a ticket entitling plaintiff to passage upon defendant's cars from said station to Lillie.

That said ticket agent was the agent and employee of the defendant — demanded and the plaintiff paid for said ticket the sum of seventy-five cents.

That the distance upon the line of the defendant's railroad between the station of Fort Smith and of Lillie is eleven miles.

Wherefore plaintiff prays judgment against said defendant
5 in the sum of three hundred dollars and for costs and for other relief.

BROWN, BROWN AND SANDELS,
Att'ys for Plaintiff.

STATE OF ARKANSAS, }
County of Crawford. }

John Stevenson, being duly sworn, states that the matters and facts set forth in the complaint are true.

—— ——.

Subscribed and sworn to before me this 6th day of September, 1887.

BEN. DECHERD, *Clerk.*

Filed August 19th, 1887.

BEN. DECHERD, *Clerk.*

Summons.

Summons issued August 19th, 1887; served August 19th, 1887; returned and filed in clerk's office Aug. 22nd, 1887.

Answer.

In the Crawford Circuit Court.

(Style of cause as above.)

Comes the defendant herein and, for answer to plaintiff's complaint, says that it denies that it is a railway corporation duly organized under the laws of the State of Arkansas. Defendant denies that it owns and operates a continuous line of railroad from Saint Louis, in the State of Missouri, through the State of Arkansas and the Indian Territory to Paris, in the State of Texas.

Defendant denies that on the 5th day of July, 1887, plaintiff applied to the ticket agent of the defendant railway Co. stationed at Fort Smith, a station situated on the said line of defendant railway Co., for a ticket entitling him to a passage upon defendant's cars from Ft. Smith to Lillie station.

Defendant denies that said ticket agent, who was the agent and employee of defendant, demanded and that plaintiff paid for
6 a ticket the sum of seventy cents.

The defendant denies that this amount alleged to have been paid by plaintiff to this defendant for his said passage is in excess of the legal rate of fare as allowed and regulated by law.

Wherefore defendant denies that plaintiff is entitled to judgment against it in the sum of three hundred dollars and for costs of this action.

II. Defendant, further answering, says that the pretended law referred to in said petition and upon which plaintiff bases his cause of action, to wit, "An act to regulate the rates of charges for the carriage of passengers by railroads," and alleged to have been approved April 4th, 1887, was never passed by the legislature of Arkansas, nor signed or approved by the governor of said State in the manner required by the constitution and laws thereof. And the defendant further avers that by the constitution of the State of Arkansas it is and was at the dates in plaintiff's petition mentioned provided that the legislature of said State have and possess the power to make and determine the rules of and for its proceedings; that the legislature upon whose pretended enactment plaintiff brings his cause of action in said petition did make, determine, and publish rules for its government, and which were known as the "joint rules of the senate and house of representatives of the State of Arkansas for the session of 1887; that by said rules it was provided as follows:

Rule 7. When a bill shall have passed both houses it shall be enrolled by the enrolling clerk of the house in which it originated.

Rule 8. All bills must be enrolled and returned to each house by the enrolling committee within three days after their passage.

Rule 9. No bill, resolution, or memorial shall be sent to the governor for his approval unless the same shall have been clearly and fairly enrolled without obliteration or interlineation.

7 Rule 10. When a bill is enrolled it shall be examined by a joint committee, composed of three members of each house, appointed as a standing committee for that purpose, and it shall be their duty to compare the enrolled with the engrossed bills, correct any errors that may be discovered, and report the same forthwith to their respective houses.

Rule 11. After examination and report by the enrolling committee each bill shall be signed, first by the speaker of the house of representatives and then by the president of the senate.

Rule 12. When a bill shall have been signed by the speaker of the house and president of the senate it shall be delivered to the governor by the joint committee on enrolled bills, who, through their chairman or some other member of the committee, shall report to each house the day on which such bill was delivered, which report shall be entered on the journals of the respective houses.

And the defendant further avers that the pretended enactment aforesaid was never enrolled by the clerk of the house in the manner required by said rule 7; that said pretended act or bill was never reported to either the house of representatives or the senate of said State of Arkansas within three days after its passage; that the said pretended bill was not sent to the governor for his approval after the same had been clearly and fairly enrolled; that said pretended bill was never examined or compared with the engrossed bill by a joint committee of the house of representatives and senate as re-

quired by said rule ten; that said pretended bill was never signed by the speaker of the house of representatives and the president of the senate as required by rule eleven; that said pretended bill was never delivered to the governor of said State of Arkansas by
8 joint committee of enrolled bills or through the chairman or any member of said committee returned to either the house of representatives or of the senate of said State on the day the same was delivered or any other day as required by rule twelve, and that said pretended bill, referred to in plaintiff's petition as hereinbefore, is null, of no effect, and void.

III. Defendant, further answering, says that the stations of Fort Smith and Lillie in said complaint mentioned are on the line of the Missouri, Arkansas and Southern railway, for the purpose of constructing which the Missouri, Arkansas and Southern Railway Company was organized on the 16th day of Aug., 1880, under the general laws of the State of Arkansas, then in force, and which was authorized to construct a railway from the town of Fayetteville, Arkansas, thence southward to Ft. Smith, in said State; that the statutes of the State in force at the time of the incorporation of said railway company as aforesaid *it was* provided that said company should have the right to regulate the time and manner in which passengers and property should be transported and the tolls and compensation to be paid therefor, not to exceed the sum of five cents per mile; and it was also further provided that while the legislature might when any such railroad should be opened for use from time — alter or reduce the rates of fares, tolls, freights, or other profits upon such road, yet it was further provided that the same should not without the consent of the corporation be so reduced as to produce from said profits less than fifteen per cent. per annum on the capital actually paid in, nor unless on an examination of the amounts received and expended to be made by the secretary of state he should ascertain that the net income derived by the company from all sources for the year last past should have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in, and that until such profits did
9 actually accrue to said company its successors and assigns were granted without limitation, restriction, or control the right to fix such rates of fares as to it should seem meet and proper; that the annual reports and returns required by law have at all times been duly and properly made in accordance with the laws of the State of Arkansas by the Saint Louis, Arkansas and Texas Railway Company of Arkansas, the Missouri, Arkansas — Southern Railway Co., as prescribed by law and required by their respective charters; that at such time it was also provided by the laws of said State, which have remained and are yet in force, that any two or more railroad companies in said State existing under either general or special laws and owning railroads constructed wholly or in part, which, when completed and connected, would form one continuous line of railroad, continuing and running in the same general direction, were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or

without this State, and form one company owning and controlli-g said continuous line of road with all the powers, rights, privileges, and immunities which belonged to or vested in either of the said companies making such consolidation.

That said Missouri, Arkansas and Southern Railway Company was connected at its northern terminus with the railway of the Saint Louis, Arkansas and Texas Railway Company (of Arkansas), a corporation organized and existing under the general laws of the State of Arkansas; that said Saint Louis, Arkansas and Texas railway was connected at its northern terminus on the boundary line of the State of Missouri with the railroad of the Saint Louis, Arkansas and Texas Railway Company (of Missouri), a corporation organized under the laws of the State of Missouri and running from said terminus northwardly to the town of Plymouth, in the State last aforesaid; that at said time it was also provided by the laws of the
10 said State of Missouri which have remained and are yet in force that any two or more companies in said State existing under either general or special laws and owning railroads constructed wholly or in part which, when completed and connected, would form one continuous line of railway continuing and running in the same general direction were authorized to consolidate their stock and make joint stock with any connecting railroad company, whether within or without the State, and form one company owning and controlling said continuous line of road, with all the powers, rights, privileges, and immunities which rested upon either of the companies making such consolidation; that on the 10th day of June, A. D. 1881, said three corporations last named consolidated their companies in the manner required by the laws of the States of Arkansas and Missouri into a corporation known as the Saint Louis, Arkansas and Texas Railway Company (consolidated); that the railway of said last-mentioned corporation connected at the town of Plymouth, its northern terminous, with the railway of the Saint Louis and San Francisco Railway Company, a corporation organised and existing under the general laws of the State of Missouri and the several acts of the Congress of the United States, and formed therewith a connecting and continuous line of railway running and continuing in the same general direction; that on and previous to the 21st day of February, 1882, it was provided by the laws of the State of Arkansas and of the State of Missouri that any railroad corporation incorporated under the laws of said State of Missouri might lease or purchase any part of a railroad with all its rights and privileges, franchises, immunities, real estate, and other property, the whole or a part of which was in the State of Missouri and constructed, owned, and leased by any other company, if the line or lines of that road or roads of said company were connected and continuous, and that any railroad corporation incorpo-
11 rated under the laws of the said State of Arkansas whose road was wholly or in part constructed and in operation was authorized to and might sell, lease, or otherwise dispose of the whole or any part of its railroad with all the rights, privileges, franchises, and immunities thereunto belonging or in anywise appertaining to

any connecting railroad or any railroad corporation then or thereafter organized under the laws of said State of Missouri or of the United States or of both; that in the manner provided by the statutes of the States of Missouri and Arkansas said Saint Louis, Arkansas and Texas Railway Company, consolidated, did, on the 21st day of February, 1882, convey, by good and sufficient deed, to the Saint Louis and San Francisco Railway Company all of its railway in said States of Arkansas and Missouri, together with all the rights, franchises, privileges, and immunities thereunto belonging or appertaining; and defendant avers that by the statutes of said State in force at the time said State of Arkansas did enter into a contract with said Missouri, Arkansas and Southern Railway Company, by which the said State granted to the said railway company, its successors and assigns, the privileges and franchise of making and fixing of reasonable rates of fares for the transportation of passengers, and did at the time contract with said company that it should have the right, privilege, and immunity of fixing fares and charging tolls for the transportation of passengers at such sums as would enable it to realize upon the capital actually paid in a profit of not less than fifteen per cent. per annum; that by the laws of said State in force as aforesaid it was also provided that any company with which said Missouri, Arkansas and Southern Railway Company might consolidate should possess all the rights, franchises, powers, and privileges possessed at the time of such consolidation by said last named company; that by reason and force thereof said Saint Louis, Arkansas and Texas Railway
Company (consolidated) acquired and possessed the same
12 rights, powers, privileges, and franchises which belonged or appertained to said Missouri, Arkansas and Southern Railway Company; that at the time of such consolidation said Missouri, Arkansas and Southern railway had not yet been completed; that the line proposed and which was afterwards constructed was surveyed and laid out through a mountainous and almost uninhabited country; that the expense of constructing the same promised to be large and the probable business which said road would receive for a large number of years would not justify the expenditure; that said railway company was without means, as was also said Saint Louis, Arkansas and Texas Railway Company (consolidated), to construct and complete the proposed line of railway on which the stations in plaintiff's petition mentioned are situated; that, relying upon the faith and contract of the agreement of said State of Arkansas with said railway company aforesaid that no regulation of its right to charge rates, fares, or freights would be exercised until the net profits upon the capital actually paid in to construct the line of railroad did exceed fifteen per cent., said Saint Louis and San Francisco Railway Company did purchase of said Saint Louis, Arkansas and Texas Railway Company (consolidated) aforesaid its line of railway and did assume all of its debts and obligations in express consideration of obtaining the right and priviledge to exercise the franchise of fixing its own rates of fares and tolls until the same should equal a profit of fifteen per cent. on the capital actually in-

vested; that, relying on the faith of said contract aforesaid of said State with said companies, numerous parties were induced to and did buy the bonds of said Saint Louis and San Francisco Railway Company secured upon the railway of the said Missouri, Arkansas and Southern Railway Company and the franchises, privileges, and immunities thereto appertaining; that said railway, although
13 completed for about five years, has never at any time earned an amount equal to three per cent. on the capital actually paid in, nor is it probable or possible that the earnings of said railroad for the next ensuing two years will exceed three per cent. on the capital actually paid in, and that if said railway company, defendant herein, is required to charge no more than three cents per mile on said line of railway its net earnings will be so reduced that no profit whatever will inure to the owners thereof; and the defendant avers that the corporation of the Missouri, Arkansas and Southern Railway Company, the consolidation of the railroads to the defendant company, as well as the mortgaging thereof by defendant company, were each and all contracts made and entered into upon the faith that the contracts of the State of Arkansas with the several companies would not be broken; wherefore plaintiff avers that the pretended law in plaintiff's petition mentioned is in violation of the laws and constitution of the State of Arkansas and impairs the obligations of the several contracts entered into upon the faith thereof as aforesaid, in violation of section ten, article 1, of the Constitution of the United States, and is null and void.

IV. Defendant, for further answer, says that the Missouri, Arkansas and Southern Railway Company, hereinbefore in the third count of this answer mentioned, was incorporated under the general laws of the State of Arkansas in force at the date thereof; that subsequently, to wit, in the manner required by the laws of the State then in force, it did, on the 10th day of June, 1881, enter into articles of consolidation with the said Saint Louis, Arkansas and Texas Railway Company (of Arkansas) whereby it did make joint stock with said companies forming the Saint Louis, Arkansas and Texas Railway Company (consolidated); that subsequently thereto said consolidated railway company did, in the manner required by the law in force at the time, sell and convey its railway franchises, privileges, and immunities
14 thereto appertaining to this defendant; and the defendant avers that the general laws of said State in force at the several dates last hereinbefore mentioned formed the charter of the said Missouri, Arkansas and Southern Railway Company and said Saint Louis, Arkansas and Texas Railway Company (consolidated), to which the defendant company has succeeded, and an act of Congress of the United States entitled An act to authorize the construction of a bridge across the Arkansas river at Van Buren, Crawford county, Arkansas, approved July 3rd, 1882, and under which it is authorized to operate and maintain its line; and defendant avers that by section six (6), article twelve (12) of the constitution of the said State of Arkansas, in force at the several dates hereinbefore mentioned, it was provided that no charter of any corporation

should be altered, revoked, annulled, or repealed in such a manner as to do injustice to the incorporators. Defendant avers that if said fares as in plaintiff's complaint mentioned are established as a maximum beyond which this defendant cannot charge it will not be able to earn a sufficiency to pay a reasonable rate of interest on its fixed indebtedness actually incurred in constructing said railway; that the railway on which the stations in plaintiff's petition mentioned are situated is one which is highly expensive to construct and is highly expensive to maintain; that the actual cost of transporting passengers over said division and the maintenance of the road in condition exceeds the price fixed as a maximum by the pretended law aforesaid.

Wherefore defendant says that said pretended act is unreasonable and does this defendant and the incorporators of said Missouri, Arkansas and Southern Railway Company, which constructed said line of railway, and their successors who succeeded to their rights and privileges a material injustice, and is, therefore, in violation of said constitution of Arkansas and null and void.

V. Defendant, for further answer, says that the line of railway aforesaid in plaintiff's complaint mentioned on which stations therein described are located was constructed through a country which necessitated the expenditure of vast sums of money and which were much in excess of the usual and ordinary cost per mile of railway construction; that the grades upon the same are very heavy, and that many cuts, fills, embankments, bridges, trestles, and tunnels are situated thereon, for the maintenance of which large sums are required and demanded; that the actual cost of conducting the transportation of passengers over said railway exceeds the sum of three cents per mile; that the charge of five cents per mile for carrying a passenger over each and every mile of railway hereinbefore in this answer described is a reasonable and just charge and that such sum is not an excessive charge for transporting passengers; that the charge of five cents per mile being not excessive and the charge of three cents per mile being unreasonable and unjust said pretended law is illegal and void.

VI. Defendant, further answering, says that said pretended act discriminates between railroads of the same class in this, that railroads seventy-five miles and less in length owned by separate corporations and not operated by corporations who own other lines of railroad are permitted under the provisions thereof to charge the sum of five cents per mile, while railroads of the same length and same class which may be operated or controlled by corporations owning other lines or railway in the State are limited to a maximum of three cents per mile for the same class of service upon the same class of roads. Wherefore defendant avers that said pretended law is special legislation and makes arbitrary discriminations between different railroads of the same class and is therefore in conflict with and in violation of article 2 of the constitution of the State of Arkansas and is a denial to the defendant of the equal protection of the law, contrary to the provis-

ions of section 1 of the 14th amendment to the Constitution of the United States.

VII. Defendant, further answering, says that the line of railroad therein described is and was at the dates therein mentioned by the acts of Congress of the United States declared to be a post and military route and national public highway of the United States for postal, military, and other governmental services and subject only to such regulations as the Congress of the United States may impose as to the rates of freights and fares to be charged for carrying persons and property thereon, and that the right to fix the rates of fares and tolls which shall be charged thereon has been expressly reserved by the Congress of the United States to itself and any interference or attempted regulation thereof by the legislature of the State of Arkansas is unwarranted and illegal, and that by reason thereof said pretended act in plaintiff's petition mentioned is null and void as to this defendant.

VIII. Defendant, further answering, says that the continuity of the defendant's railway between the stations of Fort Smith and Lillie is broken by the Arkansas river, across which has been constructed a railroad bridge with the approaches thereto, connecting on either side with the tracks of the defendant railway and forming therewith a continuous line of railway running from Fayetteville to Fort Smith, both in the State of Arkansas; that said bridge was constructed and caused to be constructed, under the provisions and authority of an act of Congress of the United States entitled An act to authorize the construction of a bridge across the Arkansas river at the town of Van Buren, Crawford county, Arkan-
17 sas, approved July 3rd, 1882, by the defendant company; that by the provisions of said act there was expressly reserved to the defendant company or the Secretary of War of the United States the sole and exclusive right to fix and control the rates of fares and tolls which should be charged upon said bridge and for the carrying or transporting freight or passengers thereover; that the defendant company and Secretary of War *has* heretofore and before the dates in plaintiff's petition mentioned had fixed, published, and announced a tariff of rates which should be charged for carrying or transporting freight or passengers over said bridge, and that by such tariff the price and sum of forty cents was affixed as the rate which should be charged solely for carrying each passenger over said bridge and the approaches thereto belonging, and that such tariff was at the several dates mentioned in plaintiff's petition and is still in force; that of the amount charged plaintiff forty cents thereof was solely for carrying him across said bridge and the approaches thereto belonging, and such charge was duly authorized by said act of Congress of the United States of America hereinbefore mentioned, and any of the legislation of the State of Arkansas conflicting with said act of Congress is null and void and of no effect. Wherefore defendant prays that it be discharged and have judgment for its costs herein laid out and expended.

IX. And, for further answer, defendant says that by the laws of the said State of Arkansas in force at the time of the consolidation

in the third count in this answer set forth, reference to which is now made as though fully set out in this count, it was provided that after the consolidation or sale of any line of railway to any connecting line there should remain and appertain to said line so consolidated all the rights, privileges, franchises and immunities, liabilities and obligations which appertain or belonged to said company before such consolidation, and that its
18 condition for all purposes should remain the same as though no such consolidation had been affected; that said Missouri, Arkansas and Southern Railway Company is less than seventy-five miles in length; and defendant avers that such being the case and the said stations in plaintiff's complaint mentioned being upon line of railway less than seventy-five miles in length, the said defendant railway company had the right to charge thereon a sum not exceeding five cents per mile.

X. Stricken out by consent.

XI. Defendant further answering says that any sum which the plaintiff herein may have paid the defendant company for any services rendered by it in the carriage and transportation of the property and the carriage and transportation of the plaintiff as a passenger of otherwise was voluntarily paid, without protest or objection on the part of the plaintiff. Whereupon defendant says that the plaintiff should not, from the facts in his complaint, be allowed to recover herein.

Whereupon defendant having fully answered, prays to be hence dismissed, with all his cost in this suit laid out and expended.

JOHN O'DAY,
CLAYTON & BRIZZOLARA,
Att'ys for Defendant.

STATE OF ARKANSAS,)
County of Crawford.)

I, James Brizzolara, do solemnly swear that I am one of the attorneys of the Saint Louis and San Francisco Railway Company, and that the statements and facts set forth and contained in the foregoing answer are true.

JAMES BRIZZOLARA.

Sworn to and subscribed before me this 4th day of Oct., 1887.
BEN. DECHERD, *Clk.*
By J. J. BUNNOW, *D. C.*

19 Filed in open court September 19th, 1887.
BEN. DECHERD, *Clk.*

Circuit Court Record, Sept. Term, 1887.

SEPT. 19TH, 1887.

(Style of cause as above.)

On this day comes the defendant, by his attorney, and files answer.

Demurrer to Answer.

In the Crawford Circuit Court, Sep. Term, 1887.

(Style of cause as above.)

Comes the plaintiff and demurs to the 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 paragraphs of the answer of the defendant herein, and for cause says that said above-mentioned paragraphs, nor either of them, state facts sufficient to constitute a defense to said action.

BROWN, BROWN & SANDELS,
Att'ys for Plaintiff.

Filed in open court Oct. 4th, 1887.

BEN. DECHERD, *Clk.*

Judgment on Demurrer.

Circuit Court Record, Sept. Term, 1887.

OCTOBER 5TH, 1887.

(Style of cause as above.)

On this day the parties herein appeared, by their respective attorneys, and, after argument of counsel being heard, the court sustained the demurrer of the plaintiff heretofore filed to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, & 11 (and by consent paragraph 10 was stricken out); to which action and ruling of the court the defendant at the time excepted.

Trial and Judgment.

Circuit Court Record, Sept. Term, 1887.

(Style of cause as above.)

OCT. 5TH, 1887.

Comes the plaintiff, by his attorneys, Brown, Brown and Sandels, and the defendant, by its attorneys, Clayton and Brizzolara, and this cause being submitted upon an agreed statement of facts, which is in words and figures as follows:

Agreed Statement of Facts.

That the plaintiff applied to the agent of the defendant at the station mentioned in the complaint for a ticket as set forth in the complaint; that the agent demanded and received as fare the sum mentioned in the complaint; that the distance upon the line of the defendant's railway between the point mentioned in the complaint are stations of and situate upon the defendant's railway; that the entire line of defendant's railway in the State of Arkansas is more than seventy-five miles in length; that the defendant is a corporation duly organized under the laws of the State of Missouri and not of Arkansas and chartered under an act of Congress; that the allegations in paragraph three of defendant's answer as to organization, consolidation, and sale of railways are true; that the de-

fendant, believing the act was unconstitutional and was void, continued to charge its usual fare until the supreme court of the State of Arkansas decided the law to be valid and of force, when it lowered its rates in conformity with the provisions of the act of 1887 fixing the rates of passenger fare at three (3) cents per mile.

Verdict.

And the court, having heard argument of counsel and being well and sufficiently advised, doth find for the plaintiff as damages in the sum of seventy-five ($75) — and an attorney's fee of ten ($10) dollars.

21 *Judgment.*

It is therefore considered, ordered, and adjudged that the plaintiff have and recover of and from defendant the sum of seventy-five dollars damages and an attorney's fee, $10.00, and all costs in this suit laid out and expended.

And it is further *agreed* that the execution of the judgment herein be suspended until case of John Stevenson *v.* St. L. & S. F. R'y Co., No. 61 on common-law docket, be finally decided, and upon affirmance of said cause No. 61 that execution issue herein, and upon the removal of said cause said judgment be set aside and defendant allowed to plead herein.

Motion for New Trial.

In the Circuit Court of Crawford County.

(Style of cause as above.)

OCT. 6TH, 1887.

Now comes the defendant in the above cause and moves the court for a new trial in the aforesaid cause—

First. Because the findings and the verdict and decision of the court is contrary to the evidence and not sustained by sufficient evidence.

Second. Because the findings, verdict, and decision of the court are contrary to law.

CLAYTON AND BRIZZOLAR,
Att'ys for Def't.

Filed in open court Oct. 6th, 1887.

BEN. DECHERD, *Clk.*

Motion for New Trial Overruled.

Circuit Court Record, Sept. Term, 1887.

(Style of cause as above.)

OCT. 6TH, 1887.

On this day comes the defendant, by its attorney, and files a motion for a new trial. The court, after argument of counsel
22 being heard, overruled the motion.

Appeal Granted.

To which ruling of the court the defendant at the time excepted and prayed an appeal to the supreme court, which was granted and the defendant allowed thirty days within which to prepare and file bill of exceptions.

Bill of Exceptions.

In the Circuit Court of Crawford County, Arkansas, September Term, A. D., 1887.

JOHN STEVENSON, Plaintiff, *vs.* ST. LOUIS & SAN FRANCISCO R'W'Y CO., Defendant.	No. 61. Compl't at Law. Bill of Exceptions.

Be it remembered that in the above-entitled cause the following among other proceedings were had at and during the regular September term thereof, 1887:

On the 4th day of October, A. D. 1887, plaintiff filed his demurrer to the 2, 3, 4, 5, 6, 7, 8, 9, and 10 and 11 counts of paragraphs of defendant's answer, which demurrer was in words and figures as follows, to wit: (For demurrer see page 26.) Which demurrer was argued and, after being by the court considered, was sustained as — the 2, 3, 4, 5, 6, 7, 8, 9, & 11 paragraphs in said answer, except paragraph one, the 10th paragraph being by consent stricken out, and said paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 11 of said defendant's answer were stricken out by the court: to which ruling and order of the court in sustaining the demurrer and striking out each and all of the paragraphs aforesaid in said answer except paragraphs 1 defendant then and there at the time excepted.

That on the trial of this cause in said court, on the 3rd day of October, 1887, at the September term thereof, the said cause was submitted, by agreement of counsel, to the court sitting as a jury, upon the following agreed statement of facts, to wit: That
23 the plaintiff applied to the agent of the defendant at the station mentioned in the complaint for a ticket as set forth in the complaint; that the agent demanded and received as fare the sum mentioned in the complaint; that the distance upon the line of the defendant's railway between the points mentioned in the complaint is as set out in the complaint; that the stations mentioned in the complaint are stations of and situate upon the defendant's railway; that the entire line of defendant's railways in the State of Arkansas is more than seventy-five miles in length; that the defendant is a corporation duly organized under the laws of the State of Missouri, and not of Arkansas, and chartered under an act of Congress; that the allegations in paragraph 3 of defendant's answer as to organization, consolidation, and sale of railways are true; that the defendant, believing that the act was unconstitutional and void, continued to charge its usual fare per mile until the supreme court of the State of Arkansas decided the law to be valid and of force, when it lowered its rates in conformity

with the provisions of the act of 1887 fixing the rates of passenger fare at 3 three cents per mile; that all paragraphs of answer except paragraph 1 being stricken out on demurrer, this statement of facts applies only to paragraph 1 Which aforesaid agreed statement of facts was entered into by counsel after defendant had produced competent witnesses and by them offered to prove to the court, in support of the issues raised by the first prragraph of the defendant's answer (a demurrer having been sustained to all the other paragraphs of the said answer), that—

First. That the actual costs of the defendant's railway and each of the consolidating lines which it purchased was over fifty thousand dollars per mile.

Second. That the actual amount of the capital stock of each of the roads in question was as follows, to wit:

24 St. Louis and San Francisco Railway Co.. $40,000 per mile;
St. Louis, Ark. and Texas Railway Co., consolidated..... $40,000 per mile;
St Louis, Arkansas and Texas Railway of Mo .. $40,000 per mile;
St. Louis, Arkansas and Texas Railway of Ark.. $40,000 per mile;
Mo., Ark. and Southern Railway Co..... .. $40,000 per mile;

and all of which consisted in cash actually paid into the treasury of the said railway companies.

Third. That in addition to said sum of money so paid into the treasuries of said railway companies, said railways were mortgaged for large amounts, to wit, the sum of more than five hundred thousand dollars to the *bona fide* holders of their bonds secured thereby on which it was required to pay annually large sums of money (— per cent.), and which sums of money so borrowed, secured mortgages aforesaid, had been used in addition to the capital stock of said company in the actual construction thereof.

Fourth. That the actual gross earnings of said Missouri, Arkansas and Southern, said St. Louis, Arkansas and Texas Railway, consolidated, and the defendant's line never exceeded and for the next three years cannot exceed the sum of three thousand dollars per per mile annum.

Fifth. That of such earnings it has and must in the furture of necessity expend and actually pay out in cash the sum $2,400.00 per mile per annum for the maintenance of its trains and railway and taxes thereon; that the actual cost of carrying passengers over the line of the railroad in plaintiff's complaint mentioned, and the actual cost of carrying plaintiff at the time and in the manner in the complaint described, was three and one-half cents per mile for each mile which said passenger was carried upon so much of said railway as was not included in the bridge at Van Buren or the approaches thereto, and that the actual cost of carrying passengers
25 across such bridge at Van Buren was forty (40) cents for each passenger carried thereover; that the actual cost incurred by defendant in carrying the plaintiff from Fort Smith to Lillie was $38\frac{5}{10}$ cents (thirty-eights and five-tenths cents); that the difference between the cost of carrying such passenger, to wit, $3\frac{1}{2}$ cents per

mile, and forty cents for the bridge charge, and the amount which was actually charged, to wit, five cents per mile, would not yield the defendant three per cent. on the actual paid-in capital stock of any of the companies consolidated as in the answer set forth.

Sixth. That the length of Missouri, Arkansas and Southern railway was sixty-four miles.

Seventh. The continuity of the defendant's railway is broken by the Arkansas river, across which defendant has constructed and caused to be constructed a bridge which, with the approaches thereto, connect with the defendant's railway, forming therewith a continuous line, and being the one over which the plaintiff was carried; that such bridge was constructed by defendant under the authority of an act of Congress of the United States, entitled "An act to authorize the construction of a bridge across the Arkansas river at Van Buren, in Crawford county, Arkansas," approved July 3rd, 1882; that passengers being transported over defendant's railway between the stations of Fort Smith and Lillie were required to and must have been carried over said bridge; that by the provisions of said act there was reserved to the Secretary of War of the United States the right to fix the rate of tolls that should be charged for passengers carried over said bridge, and that of the sum charged plaintiff for carrying him between the stations of Fort Smith and Lillie forty cents was charged for carrying him over said bridge and the approaches thereto, which sum so charged had been previously fixed by the defendant and also by the Secretary of War as
26 the sum to be so charged each person carried by defendant over said bridge; that the sum so charged plaintiff for carrying plaintiff over said bridge had long prior thereto been fixed by it and the Secretary of War as the rate to be charged for carrying passengers over said bridge and is still in force; and said defendant offered to prove by said witnesses in support of said first paragraph of its answer each and every fact set forth and alleged in the 2, 3, 4, 5, 6, 7, 8, 9, & 11 paragraphs of said defendant's answer. Upon the offering of such proof, and each and every part and portion of the same, plaintiff objected to admission of such testimony as incompetent and irrelevant, which objection was sustained by the court, and each and every part thereof excluded; to which ruling of the court in excluding said evidence and each and every part and portion thereof the defendant at the time then and there excepted; whereupon, saving its exceptions to the said ruling of the court in excluding said evidence and not waiving the the same, the said defendants and plaintiff intered into the agreement of the aforesaid agreed statement of facts.

The above, together with the aforesaid agreed statement of facts, was all of the evidence offered by either party.

Whereupon the court found a verdict for the said plaintiff.

Whereupon the said defendant, at the said term of said court, on the 6th day of October, A. D. 1887, filed a motion for a new trial in words and figures following, to wit: (Motion for new trial, page 29). Which said motion afterwards, on the 6th day of October, 1887, came on for hearing, whereupon the court overruled the same; to

which ruling of the court the said defendant at the time then and there excepted and prayed the court that his exceptions might be allowed and that he have thirty days wherein to file his bill of exceptions, and prayed an appeal to the supreme court of the State of Arkansas, which was done, and this his bill of exceptions
27 was signed and sealed on the 1st day of November, 1887, and made a part of the record.

JOHN S. LITTLE,
Judge 12th Circuit Arkansas.

Filed November 5th, 1887.

BEN. DECHERD, *Clk.*
By J. J. BUNNOW, *D. C.*

28 *Certificate to Transcript.*

STATE OF ARKANSAS,)
County of Crawford.)

I, Ben. Decherd, circuit court clerk within and for the county and State aforesaid, do hereby certify that the preceeding *38* pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof I have hereunto set my hand and
[L. S.] official seal this Dec. 7th, 1887.

BEN. DECHERD, *Clk.*
By J. J. BUNNOW, *D. C.*

Fee Bill.

And I further certify costs as follows, to wit:

Ben. Decherd, cl'k, original fee	$2 75
" " " this transcript	6 65
	$9 40
James M. Baxter, D. S.	50
Total	$9 90

BEN. DECHERD, *Clk.*
By J. J. BUNNOW, *D. C.*

29 STATE OF ARKANSAS:

In the Supreme Court of Arkansas.

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 27th day, being the fourth Monday, of May, A. D. 1889, amongst others, were the following proceedings, to wit, on the 4th day of November, 1889, a day of said term:

ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* JOHN STEVENSON, Appellee. } Appeal from Crawford Circuit Court.

Submission.

Come the appellant and appellee, by attorneys, and this cause being regularly called, is submitted upon the appellant's briefs and by the court taken under advisement.

Judgment of the Supreme Court.

JANUARY 3RD, 1891.

ST. LOUIS & SAN FRANCISCO R'Y CO., Appellant, *vs.* JOHN STEVENSON, Appellee. } Appeal from Crawford Circuit Court.

Judgment supreme court.

This cause came on to be heard upon the transcript of the record of the circuit court of Crawford county, and was argued by counsel. On consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is, therefore, considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

And it appearing to the court that said appellant, with W. H. H. Clayton and James Brizzolara as sureties, has filed a supersedeas bond in this cause, it is further considered that said appellee recover of said appellant and W. H. H. Clayton and James
30 Brizzolara the sum of eighty-five dollars, with interest at 6 per cent. per annum from the 5th day of October, A. D. 1887, the amount of judgment of said circuit court, and the further sum of eight dollars and fifty cents, being ten per cent. thereon, and costs.

It is further considered that said appellee recover of said appellant and said sureties all his costs in this court and the court below in this cause expended and have execution thereof as well as of said judgment.

31 In the Supreme Court of Arkansas, Jan. 3rd, 1891.

ST. L. & SAN FRAN. R'Y CO. *v.* STEVENSON. } No. 29.

Opinion.

HEMINGWAY, *J.*:

The answer in this cause presented the same questions decided against the appellant in the case of Gill *v.* St. Louis & San Fran-

cisco Railway Company, *ante* p. It presented an additional paragraph, in which it was alleged that the alleged overcharge was for transportation over ten miles of the defendant's railroad, and also for passage over a bridge across the Arkansas river; that the bridge connects the line of the appellant's road on either side of the river, and was built under an act of Congress which reserved to the appellant and the Secretary of War the exclusive right to regulate tolls for carrying passengers across it. The appellant charged for the ticket three cents per mile for passage over the road and forty cents for passage over the bridge. The appellant sold the ticket for a continuous passage from Fort Smith to Lillie, including passage over the bridge. By the act of Congress under which the bridge was built (approved July 3rd, 1882) it is provided that no higher charge shall be made for the transportation of passengers over it than is paid for similar transportation over the railroad leading to the bridge. It is therefore no defense that the charge of seventy cents for a ticket for travel of eleven miles included a passage over the bridge.

Affirm.

32 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y, Appellant, *vs.* JOHN STEVENSON, Appellee.	Application for Allowance of Writ of Error.

To the Hon. S. R. Cockrill, chief justice of the supreme court of Arkansas:

Comes the St. Louis and San Francisco R'y Co., by its attorneys, Clayton, Brizzolara & Forrester, and complains that in the records and proceedings, and also in the rendition of a judgment in a suit between John Stevenson, plaintiff, and The St. Louis and San Francisco R'y Co., defendant, in the supreme court of the State of Arkaansas, being the highest court of law or equity in said State in which a decision could be rendered in said suit, and in which a final judgment was rendered against it, the aforesaid defendant, on the 3rd day of January, A. D. 1891, who was the appellant in said proceeding, wherein was drawn in question the construction and validity of section 10, art. 1st, and the 5th and 14th amendments of the Constitution of the United States of America and the statutes of the United States, and the decision was against the title, rights, privileges, and franchises specially set up, based upon, claimed, and founded under and upon the construction and validity of the aforesaid sections, articles, and amendments of the Constitution of — United States of America and the aforesaid statutes of the United States—all of whic- appears in the record, pleadings, and proceedings in said suit—manifest error hath happened, to the great damage of the St. Louis and San Francisco R'y Co.:

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

CLAYTON, BRIZZOLAR & FORRESTER,
Attorneys.

LITTLE ROCK, ARK., *Jan'y 17th*, 1891.

Allowed.

S. R. COCKRILL,
Chief Justice.

33 In the Supreme Court of the State of Arkansas.

ST. LOUIS & SAN FRANCISCO R'Y. Appellant,
vs.
JOHN STEVENSON, Appellee. } Bond.

Know all men by these presents that we, James Brizzolara and Henry M. Cooper, are held and firmly bound unto John Stevenson in the full and just sum of two hundred and fifty dollars, to be paid to the said John Stevenson, his executors, administrators, or assigns; to which payment, well and truly to be *named*, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 17th day of January, A. D. 1891.

Whereas lately, at a session of the supreme court of the State of Arkansas, in a suit pending in said court between John Stevenson, plaintiff, and The St. Louis and San Francisco R'y Co., defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit and a citation directed to the said John Stevenson, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday in October next:

Now, therefore, the condition of the above obligation is such that if the said St. Louis and San Francisco R'y shall prosecute its said writ of error to effect and answer all damages and costs — it fail to make its plea good, *and* then the above obligation to be void; else to remain in full force and virtue.

JAMES BRIZZOLARA. [SEAL.]
HENRY M. COOPER. [SEAL.]

Approved:

S. R. COCKRILL, *Ch. Jus. Ark's.*

34 THE STATE OF ARKANSAS:

In the Supreme Court.

I, William P. Campbell, clerk of the supreme court of the State of Arkansas, hereby certify that the foregoing 33 pages contain a full, true, and complete transcript of the record and proceedings in said court in the cause therein stated, except the briefs of counsel.

In testimony whereof I hereto set my hand as clerk and affix the seal of said court at my office, in the city of Little Rock, Arkansas, this 15th day of April, A. D. 1891.

Seal of the Supreme Court of Arkansas.

W. P. CAMPBELL, *Clerk.*

Endorsed on cover: Case No. 14,651. Arkansas supreme court. No. 174. The St. Louis & San Francisco Railway Company, plaintiff in error, *vs.* John Stevenson. Filed May 18, 1891.